

REMARKS

I. Introduction

Claims 1-10, 13, 19-22, 26-29, 32, and 34-40 are pending. No claim changes are made herein.

II. Claim rejections under 35 U.S.C. §§102 and 103

Claims 1-8, 10, 13, 19-22, 27-29, 32, 34-40 were rejected under 35 U.S.C. §102(a) as being anticipated by “De-identification of ICU Patient Records” by Jason M. Levine (hereinafter “the Levine reference”). Claims 9 and 26 were rejected under 35 U.S.C. §103(a) as being unpatentable over Levine in view of U.S. Application No. 09/866,464 (hereinafter “the Qamar reference”).

Claim 1

Claim 1 was rejected under 35 U.S.C. §102(a) as anticipated by the Levine reference. Applicants respectfully contend that the rejection is not proper for several reasons and should be withdrawn.

Applicants respectfully contend that the Levine reference is not prior art to the present application. While the Levine reference bears a date of August 25, 2003, the Levine reference was not published until at least July 20, 2004. In particular, August 25, 2003 is merely the date on which the author (Jason M. Levine) submitted his thesis to the review committee. However, the date of submission of a thesis to a review committee is not the date of publication under 35 U.S.C. §102(a). Rather, publication of a thesis occurs only after the thesis is made available to the public. See *In re Hall*, 781 F.2d 897 (Fed. Cir. 1986). In the present case, the Levine reference was not made available to the public until, at the earliest, July 20, 2004, the date on which the Massachusetts Institute of Technology Library archived the Levine reference (shown on page 1 of the Levine reference, a print screen copy of which is submitted herewith). The present application has a filing date of September 23, 2003, prior to the July 20, 2004 archiving date of the Levine reference. Therefore, the Levine reference is not properly prior art under 35 U.S.C. §102(a) to the present application.

Claim 1 recites the following:

“modifying the portion of alphabet data if it comprises patient information so that the modified alphabet portion of the data is independent of the patient information.”

In rejecting claim 1 as anticipated, the Office Action contends that the Levine reference teaches this limitation, stating that “the alphabet data, is replaced with the name of the field, i.e. a patients name is replaced with ‘PATIENTFIRSTNAME’”.

As discussed above, the Levine reference is not properly prior art to the present application. Even if, arguendo, the Levine reference was deemed prior art, Applicant respectfully contends that this teaching in the Levine reference fails to teach or suggest modified information that is “independent of patient information.” Similar to the Sweeney Patent (U.S. Patent No. 7,269,578) and to the Scrub System (“Replacing Personally-Identifying Information in Medical Records, the Scrub System” by Sweeney), both previously used to reject the claims, the Levine reference teaches a system that that maintains anonymity in patient information by automatically generalizing, substituting and removing information as appropriate without losing many of the details found, for example, within the information. In particular, the Levine reference teaches that the patient information is replaced with data that is based on the patient information in order to avoid losing the details in the patient information. An example of this, cited in the Office Action, is to replace the patient’s first name with “PATIENTFIRSTNAME”.

Claim 1 distinguishes over the Levine reference by “modifying the portion of alphabet data if it comprises patient information so that the modified alphabet portion of the data is independent of the patient information.” Modifying the “alphabet data” may be “independent” of the “alphabet data” in one of several ways, including (1) selecting characters that are not dependent on the “alphabet data”; and/or (2) selecting a number of characters that is not dependent on the “alphabet data.” See e.g. paragraph [0026] of published application (selecting “XXX” for replacement of the patient data). This is in contrast to the Levine reference, which teaches that the alphabet data, though changed, has some basis in the original data.

In fact, this is the intent of the Levine reference. In this way, the potential viewer may tie the modified data to the original data. For example, the Levine reference teaches that a patient's first name is replaced with "PATIENTFIRSTNAME". In this way, every time a viewer sees "PATIENTFIRSTNAME," the user is aware that it is associated with a specific piece of information of the patient.

This is in contrast to claim 1, which recites a modification of the alphabet data so that the data shown is independent of the alphabet data. In this way, the viewer has much greater difficulty in tying the modified data to the original data. In the example given, a name, such as "Bill Jones" may be replaced with "XXX", so that the viewer is unable to determine that it is associated with a specific user. This replacement of "XXX" may be used for some or all of the alphabet patient data, thereby greatly increasing the difficulty of associating the shown data with a particular part of the individual. For at least this reason, claim 1 and the claims that depend thereon are patentable over the cited art.

Claim 19

Claim 19 was rejected under 35 U.S.C. §102(a) as anticipated by the Levine reference. Claim 19 recites the following:

a processor . . . modifying the alphabet portion of the data stream so that the modified alphabet portion of the data stream is independent of the patient information if the alphabet portion of the data stream comprises patient information.

As discussed above, the Levine reference is not properly prior art to the present application. Further, the Levine reference fails to teach or suggest the modifying limitation as recited above. For at least these reasons, claim 19 and the claims that depend thereon are patentable over the cited art.

Claim 27

Claim 27 was rejected under 35 U.S.C. §102(a) as anticipated by the Levine reference. Claim 27 recites the following:

a processor . . . modifying the alphabet portion of data stream if it comprises patient information so that the modified alphabet portion of the data stream is independent of the patient information.

As discussed above, the Levine reference is not properly prior art to the present application. Further, the Levine reference fails to teach or suggest the modifying limitation as recited above. For at least these reasons, claim 27 and the claims that depend thereon are patentable over the cited art.

CONCLUSION

Applicant respectfully requests the Examiner to grant early allowance of this application.

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